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THE SECOND FIVE-YEAR PLAN AND NATIONALISATION

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Before embarking on a discussion of the constitutional aspects of Nationalisation and the incidental right of States to trade and enter into commercial transactions including contracts, purchases and dispositions of property, it might be proper to consider for a while the relevancy of the question of Nationalisation to the proposed Second Five-Year Plan, which is intended to further India's progress towards the Welfare State.

As we all know the Draft Plan Frame of the Second Five-Year Plan prepared by Prof. P. C. Mahalanobis has already been submitted to the National Development Council and published with a view to eliciting public opinion. In para. 17 (2) of Page 6 of the Plan Frame he mentions thus: "The public sector must be expanded rapidly and relatively faster than the private sector for steady advance towards a Socialistic Pattern of Economy. In order to make available large capital resources for investment and National Development, and to facilitate the implementation of the Plan, Government will be prepared to enter into such activities as Banking, Insurance, Foreign trade or Internal trade in selected commodities." Para. 17 (3): "Government would also promote enterprises in partnership with the Private Sector so that, although Government would hold a controlling share, initiative can be left to private management subject to policy decisions by Government."

Suffice it to say that the above advocated principle of Nationalisation and Government control is in line with the policy of the five well-known Welfare States, New Zealand, Australia, Norway, Sweden and England.

In New Zealand, as early as 1935, the Labour Government had control of all Railways, Telephone, Telegraph and Radio services, nearly 7|8th of the State's Timber and Coal services were under Government control, and the State controlled and managed Life Insurance, Fire Insurance and Public Trust Offices and purchased all the Reserve Bank shares by an Act of 1946 as well as the shares in the Bank of New Zealand.

In Sweden the Government owned the Telephone and Telegraph Systems, important Railroads, 1|5th of the forest timber, and managed The Central Bank, The Radio, The Tobacco and Liquor Manufacture. It held a major share in the Iron Ore Companies and held major shares in Iron Ore mines and Armament Industry.

England nationalised The Bank of England in 1945 besides nationalising selected Industries like Railways, Coal, Iron, Electricity, Iron Ore, etc.

The Australian Government started the Commonwealth Bank in 1912 and the Act of 1945 further empowered the State to establish branches in various parts of the country and controlled the Credit Policy of the country. An Industrial Finance Department helped the Government in controlling financial policies and the Government passed several pieces of legislation for the enlargement of control over public activities, Natural Resources, and Basic Industries. Australia nationalised its Inter-State Airlines in 1945.

Norway has assumed control and management of various. Basic Industries in 1946 like Iron and Electricity and took over huge plants, producing steel, aluminium, electro-chemicals, agricultural machinery, etc.

Our Indian National Government has also set before itself the goal of The Welfare State and a Socialist Pattern of Society as contained in the Resolution of the Avadi Session of the Indian National Congress in January, 1955. It has already nationalised the Railways, The Reserve Bank and the Imperial Bank and the Airways and is intending to nationalise many more Industries of magnitude either by acquisition or by starting new industries.

It is in this context that one has to consider how far the principle of Nationalisation with its incidental right of the State to trade and enter into commercial transactions, which is adumbrated in the Plan Frame submitted by Prof. Mahalanobis and Avadi Congress Resolution, is compatible with the provisions of the Indian Constitution.

I had occasion to consider this question at page 59 of my book "Planning the Indian Welfare State" and I had mentioned that the right to ownership of properties by the State and the right to contract under Article 298 of the Indian Constitution carry with it the concomitant right to trade or do business. The above view was in line with the observations of the Full Bench in *Motilal* v. *The Government of the State of Uttar Pradesh*[1], to the effect that the right to Trade by instituting a Bus Service was incidental to the exercise of Executive Power of the States and that no specific legislative authority was necessary for the purpose of starting the Bus Service and that the Right to carry on a Trade by the State was one of the incidents of the ownership of property by the States.

In a recent case *Rai Saheb Ram Jawaya Kapur and others* v. *The State of Punjab*[2], the Constitution Bench of the Supreme Court of India laid down that a modern State is certainly expected to engage in all activities necessary for the promotion of the Social and Economic Welfare of the Community, and that so long as the Trade activities of the State are carried on in pursuance of the policy which the Executive Government has formulated with the tacit support of the majority in the Legislature, no objection on the score of their not being sanctioned by specific legislative provisions can possibly be raised, but that specific legislation may indeed be necessary if Government assume certain powers in excess of what they possess under ordinary law in order to carry on the particular Trade and or Business, *i.e.*, in cases where it is necessary to encroach on private rights in order that the Government may carry on their business. The Constitution Bench therefore held that the Government of The Punjab were within their rights in nationalising the issue of Text Books for Schools in the State as there was no fundamental right for the citizen of the Punjab in a matter which is entirely at the discretion of the Government.

This decision of the Supreme Court of India is in accord with the declared policy in countries like Great Britain, The Dominions and other Socialist States. The Supreme Court of the United States in *New York* v. *United States*[3] has clearly recognised that Government enterprise is no less a legitimate function of the Government than other functions traditionally regarded as Governmental.

1. I.L.R. 1951 All. 269.
2. 1955 S.C.J. 504 : (1955) 2 M.L.J. (S.C.) 59 : 1955 An.W.R. (S.C.) 313.
3. (1946) 326 U.S. 572.

The decision in *Attorney-General* v. *Fulham Corp.*[1], where the statutory power of a Borough Council to establish a Wash-House for the People was held to exclude the establishment of a Municipal Laundry, cannot now be regarded as correct state of the present law.

As remarked by Friedman in his Book "Legal Theory", page 347: "Thus with the emergence of the State as a social service instrument, the trend of the law has been to avoid, reduce, or discard the doctrine of sovereign immunity" for the liabilities like taxations, etc. arising out of the State's right to trade. In British Jurisprudence, the immunities and privileges of Government and Public Authorities in the matter of Contract, Tort, and Property transactions have been greatly reduced. The independently constituted Public Corporations such as The British Transport Commissions have been saddled with full legal responsibility as decided in *Tamlin* v. *Hannaford.*[2]

As Friedman says at page 346 in the same book: "It is now recognised as legitimate that Government may itself conduct economic enterprises of all kinds, as departmental activities, or through the semi-autonomous form of Public Corporations. The statutory constitution, in Great Britain, the Dominions and many other countries, of a great variety of public enterprises, is evidence of this agreed legislative policy."

The Supreme Court of America considered the constitutionality of creating an Industrial Commission of North Dakota and three distinct State enterprises under its control, firstly the North Dakota Mill and Elevator Association which had for its purpose the Management, the Manufacture and Marketing of Farm products, secondly the Home Building Association which was created to provide houses at a fixed price, and thirdly The Bank of North Dakota with a large reserve fund of One Crore Dollars to provide funds to replace money laid out on certain loans to be financed by the issue of Bonds. The Supreme Court of the United States in the case of *Greens* v. *Frazier*[3], declared all these acts as Constitutional. The same principle was applied also in the case of *Standard Oil Co.* v. *City of Lincoln*[4], and in *Jones* v. *City of Portland*[5].*

On the above considerations we should have no hesitation in recommending the principle of nationalisation as adumbrated by Prof. Mahalanobis in his Draft Plan Frame of India's Second Five-Year Plan, to the people of our country.

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1. L.R. (1921) 1 Ch. 44.
2. L.R. (1950) K.B. 18.
3. (1920) 253 U.S. 233.
4. (1927) 275 U.S. 504.
5. (1917) (245 U.S. 217) *(Vide* " Planning The Indian Welfare State " by C. S. Subramania Iyer, p. 71.).

ENHANCEMENT OF SMALL CAUSE JURISDICTION OF SUBORDINATE JUDGES UP TO RS. 2,000.

I have read the notes on this point by Messrs. T. R. Ramanatha Iyer, A. S. Kuppuswami and S. Vaidyanathan, Advocates, at pages 20, 26 and 27 of (1955) 2 M.L.J., and, to my mind there does not appear to be any conflict between the Provincial and Central Acts. The controversy seems to be due to a misunderstanding of the provisions thereof.

Section 15 of the Provincial Small Cause Courts Act (Central Act, IX of 1887) speaks of a Court of Small Causes, *i.e.*, a Court established under section 4 of that Act. For example, in cases where an official receiver is invested with the jurisdiction as a small cause judge, his Court and the District Munsif's Court (in exercise of small cause jurisdiction) to which he is attached constitute a Court of Small Causes which comes within section 15 of the Central Act (IX of 1887) and it cannot in any event, have pecuniary jurisdiction of over Rs. 1,000.

But, can a Court of a Subordinate Judge or a District Munsiff deriving his small cause jurisdiction under section 28 of the Madras Civil Courts Act (Madras Act III of 1873) be called a Court of Small Causes? Obviously not. The section says: "The High Court may........*invest* any District or Subordinate Judge with jurisdiction of—(not '*as*')—a judge of a Court of Small Causes", and this section is independent of section 15 of Act IX of 1887. Turning to section 32 of Act IX of 1887 we see that *so much* of Chapters III and IV (of that Act) as relates to the '*nature*' of the suit cognizable by Courts of Small Causes ....applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of the Court of Small Causes. Here, the word '*nature*', has reference to clause (1) of section 15 and the 2nd Schedule and the enactment 'for the time being in force' gives the Court the jurisdiction (territorial and pecuniary) and for the District and Subordinate Judges and the District Munsiffs the enactment is the Civil Courts Act. The limitations regarding the pecuniary jurisdiction placed on account of small causes are not applicable to Courts established under the Civil Courts Act. This view is supported by the fact that all District Munsiffs were not exercising pecuniary Small Cause jurisdiction up to Rs. 500 before the Madras Act (XVI of 1951) came into force, in spite of section 15 (2) of Act (IX of 1887). The notifications made under section 28 of the Civil Courts Act by the composite State of Madras as also the notifications issued by the States of Andhra and Madras and their respective High Courts in pursuance of Madras Act (XVI of 1951) are in consonance with this view.

If, therefore, we remember that a Court of Small Causes is something distinct from a Court invested with the jurisdiction of a Court of Small Causes, then, there can be no doubt that the States Governments can invest the latter Court with such pecuniary small cause jurisdiction as it may deem fit, under section 28 of the Civil Courts Act without reference to section 15 (3) of the Provincial Small Cause Courts Act.

There is, therefore, no conflict or repugnancy between the Central Act (IX of 1887) and the Madras Act (III of 1873) as amended by Madras Act (XVI of 1951) and the consequential notifications. The reference to the Constitution of India, or to Maxwell on the "Interpretation of Statutes" or to Broom's "Legal Maxims," is, in my opinion, not only unnecessary but also irrelevant.

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